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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

SCOTT FRASER OLIVER,

Defendant and Appellant.

C087477

(Super. Ct. No. P16CRF0140)

After a jury found defendant Scott Fraser Oliver guilty of assault and various drug-related offenses, the trial court placed him on formal probation subject to terms and conditions, including a condition providing for unrestricted search and seizure. Defendant contends neither the clerk's minute order nor the written order of probation accurately reflected the trial court's oral pronouncement of sentence and must therefore be modified. Alternatively, he challenges the constitutionality of the unrestricted search condition as overbroad and vague. We will reverse and remand to the trial court for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

A detailed recitation of the facts is unnecessary for the disposition of this appeal. Suffice it to say that defendant was pulled over by police and a search of his car revealed 24.726 grams of cocaine, 16 pill capsules containing Methylenedioxyamphetamine (also known as MDA) and Methylenedioxymethamphetamine (also known as MDMA), digital scales, and measuring spoons. Defendant was arrested and placed in county jail, where he subsequently assaulted a correctional officer.

Defendant was charged with two counts of possession for sale of controlled substances (Health & Saf. Code, §§ 11351, 11378), two counts of transportation of a controlled substance (Health & Saf. Code, §§ 11352, subd. (a), 11379, subd. (a)), and one count of assault on a custodial officer (Pen. Code, § 241.1).¹

Defendant was tried by a jury and found not guilty of the charged offenses but guilty of all counts of lesser included offenses, that is, four counts of possession of a controlled substance (Health & Saf. Code, §§ 11350, subd. (a), 11377, subd. (a)) and one count of assault (§ 240).

The trial court suspended imposition of sentence and placed defendant on summary probation for 36 months subject to terms and conditions including 150 days in county jail and search and seizure as follows: “You’re going to be subject to search and seizure 24 hours a day, 7 days a week, for the entire 3 years of your probation, meaning that a law enforcement officer or a probation officer can search your person, your residence, your place of employment, your vehicle any time, day or night. They don’t need probable cause. They don’t need a reasonable suspicion. All they need to do is know that you’re on probation with searchable terms and they can search any of those

¹ Unspecified statutory references are to the Penal Code.

four locations and seize anything they find to be an illegal controlled substance.”

Defendant did not object to the search condition.

The clerk’s minute order, filed the day of the sentencing hearing, included the condition that defendant “[s]ubmit to search and seizure of person, residence, vehicle, business and property anytime, day or night with/without probable cause for OBJECT: OPEN SEARCH.”

The court’s order of probation, also filed the day of the sentencing hearing, stated defendant shall “[s]ubmit to search and seizure of person, residence, business and property any time, with or without a search warrant. OBJECT: Other: Open Search.” Defendant signed the order of probation acknowledging receipt of the order and agreeing to comply with the terms and conditions set forth therein.

Defendant filed a timely notice of appeal.

DISCUSSION

Defendant contends the clerk’s minute order and the order of probation must be modified by striking references to “open search” to conform to the court’s oral pronouncement of judgment. Defendant further contends that, if we find the clerk’s minute order and the probation order control, we must also find the probation condition authorizing an “open search” is unconstitutionally vague and overbroad.

The People argue defendant forfeited his claim by failing to raise it in the trial court when he signed the probation order and, in any event, the search terms and conditions set forth in the court’s oral pronouncement of judgment, the minute order, and the order of probation are consistent and not unconstitutionally vague or overbroad.

Deciding the case on the merits, we agree that the minute order and the probation order were inconsistent with the court’s oral pronouncement of sentence.

Defendant asserts the well-established rule that a trial court’s oral pronouncement of judgment generally controls over the clerk’s minute order, citing *People v. Walz* (2008) 160 Cal.App.4th 1364, 1367, fn. 3 [“When there is a discrepancy between the oral

pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls. [Citations.]”]

Here, there was a discrepancy between the court’s oral pronouncement, on the one hand, and the written minute order and the order of probation, on the other hand. The court informed defendant that, as a condition of his probation, he would be subject to round-the-clock warrantless search and seizure for the entire three-year period of probation, which could include searches of his person, residence, place of employment, and vehicle. The court further explained that an officer need only know defendant was on searchable probation and could then search any of the four locations, adding that the officer could “seize anything they find to be an illegal controlled substance.” The court’s oral pronouncement neither said nor implied that defendant would be subject to an “open search” as referenced in the minute order and probation order. Rather, the oral pronouncement limited the search condition to controlled substances. Given this discrepancy, the court’s oral pronouncement prevails. (*People v. Walz, supra*, 160 Cal.App.4th at p. 1367, fn. 3.)

We conclude the clerk’s minute order and the order of probation signed by defendant were inconsistent with the court’s oral pronouncement of probation terms and conditions. As such, the reference to “open search” in the minute order and probation order must be stricken and the condition modified to comport with the court’s oral pronouncement by limiting the search condition to controlled substances.

In light of our conclusion, we need not reach defendant’s claim regarding the constitutionality of an unrestricted search condition.

DISPOSITION

The judgment is reversed and the matter remanded to the trial court to modify the written minute order and the written probation order consistent with this opinion. In all other respects, the judgment is affirmed.

RAYE, P. J.

We concur:

BUTZ, J.

MURRAY, J.